IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04-3-2008

CORAM:

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

W.P.No.36345 of 2007
and M.P.No.2 of 2007
.....

M/s.AVTEC Limited
Power Products Division
Poonapally, Hosur rep. By
its Authorised Signatory and
Deputy General Manager (HR) ... Petitioner

vs.

1.The Superintendent of Police
Krishnagiri, Krishnagiri District.

2.The Deputy Superintendent of Police
Hosur, Krishnagiri District.

3.The Inspector of Police
SIPCOT, Hosur, Krishnagiri District.

4.M/s.AVTEC Thozhilalar Munnetra Sangam
(Regn.No.117/DRP) rep. By its
General Secretary K.Matheswaran
Plot No.9/25, Phase I, Muneeswaran Nagar
Hosur 635 109.

5.L.Dinesh
6.V.Ramesh
7.C.Murugesan
8.M.K.Manivannan
9.M.Nataraj
10.N.Manjunathappa
11.S.Balu
12.T.Jagannathan ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus as stated therein.

For petitioner : Mr. R.Gandhi,Sr.Counsel

for Mr.R.G.Narendhiran

For respondents: Mr. L.S.M.Hasan Fizal
Government Advocate for R.1 to R.3

Mr.V.Prakash,Sr.Counsel
for Mr.K.Sudalaikannu for R.4 to R.12
..
ORDER

The writ petitioner has filed the above writ petition for direction against respondents 1 to 3, who are the Superintendent of Police, Deputy Superintendent of Police and the Inspector of Police, Hosur, Krishnagiri District, to give full police protection to the petitioner Company against the alleged illegal action of the respondents 4 to 12, who are the members of the Union of workers belonging to the writ petitioner and other workers, so as to enable the petitioner Company to enjoy the order of interim injunction granted by the Sub-Court, Hosur in I.A.No.100 of 2007 in O.S.No.54 of 2007 on 09.06.2007, which was made absolute on 21.11.2007.

2. When the matter came up for admission, this Court directed the learned Government Advocate, who has taken notice on behalf of respondents 1 to 3 to find out the actual position of the case. On 07.12.2007, the learned Government Advocate, on oral instructions from the second respondent has submitted that in the writ petitioner's factory there has been a dispute between the Management and its employees regarding the status of alleged temporary workers. It was also submitted that in the Campus of the factory one Sub-Inspector of Police and five Police Constables were posted round-the-clock to give protection. He also submitted that en route the place of manufacture and supply, 20 Policemen were posted for the purpose of giving protection. He also submitted that in order to have a peaceful atmosphere, a suggestion was made by respondents 1 to 3 to the writ petitioner to move the materials from the factory twice a week and in such an event, the petitioner Management can give an advance information to the second respondent, so as to enable the second respondent to give adequate protection and maintain law and order. The said submission made by the learned Government Advocate was recorded and the writ petition was disposed of with direction to the second respondent to give police protection in the above terms as and when the petitioner gives advance information. Since the said statement of the Government Advocate was recorded and the writ petition was disposed of, there was no necessity to hear respondents 4 to 12. The following was the order passed in W.P.No.36345 of 2007 on 07.12.2007.

" 4. Today, Mr.N.Senthil Kumar, learned Government Advocate on oral instructions from the second respondent viz. Mrs.Shyamala Devi would submit that in respect of the petitioner's factory, there has been some dispute between the factory and the employees/workmen, regarding the workmen having been changed. It is also further submitted, on instructions, within the campus of the factory one Sub Inspector of Police and 5 police constables have been posted to give protection round the clock. He would also submit that enroute to the place of manufacture and supply, 20 policemen are posted for the purpose of giving protection. He also submitted that in order to have a peaceful atmosphere, a suggestion was made to the petitioner, to move the materials twice a week and in such event, the petitioner-Management can give advance information to the second respondent so as to enable the second respondent to give adequate protection and to maintain law and order.
5. The above submission made by the learned Government Advocate is recorded and the writ petition is disposed of with a direction to the second respondent to give police protection on the above terms as and when the petitioner gives an advance information. No costs. Consequently, the connected miscellaneous petition is closed."

3. The 4th and 11th respondents in the writ petition representing the workers' Union of the writ petitioner have filed M.P.No.2 of 2007 to set aside the said order passed in the writ petition dated 07.12.2007, on the basis that on 08.12.2007 at 12.00 p.m. the 4th respondent has received a telegram from the writ petitioner dated 07.12.2007 booked at 11.25 a.m. stating that the matter is listed on 07.12.2007 for further hearing and on that basis no notice was served on them, M.P.No.2 of 2007 filed to set aside the order made in the writ petition dated 07.12.2007.

4. Considering the genuineness of the claim made by respondents 4 to 12 in the writ petition, who have received the notice about the writ petition only on 08.12.2007, this Court by order dated 21.01.2008, has directed the respondents 4 to 12 to file counter affidavit in the main writ petition and also directed the main writ petition to be posted for counter. The counter has been filed by respondents 4 to 12 and both the Miscellaneous Petition and the main writ petition were heard together.

5. The writ petitioner is a Company registered under the Companies Act, supplying products to Bharath Earth Movers Limited (BEML), which is an establishment under the Ministry of Defence, Union of India. The 4th respondent is a registered Trade Union of the petitioner Company and respondents 5 to 12 are the previous and present Office Bearers of the 4th respondent Union. According to the writ petitioner, there has been some industrial dispute between the Management and the Union and the same is pending. The Union office bearers and other members went on strike from 15.11.2007, which according to the petitioner is illegal, since there was no proper notice given and it was in violation of the wage settlement.

5(a). According to the petitioner, respondents 4 to 12 have been causing disturbance to the Management by not allowing the other willing employees as well as staff to enter into the factory premises about which several complaints were filed to respondents 1 to 3 from April,2007 and specific complaints were made to give protection on 19.10.2007 and 25.10.2007. Since there were no effective steps taken by respondents 1 to 3, the writ petitioner has filed O.S.No.54 of 2007 on the file of Sub-Court, Hosur for permanent injunction restraining the 4th respondent and its members from obstructing and preventing the ingress and egress of men and materials from and to the factory and from holding any violent demonstrations and meetings, shouting defamatory slogans, etc. within 300 meters from the petitioner's factory.

5(b). The petitioner has also filed I.A.No.100 of 2007 for temporary injunction. The trial Court, on 09.06.2007, has passed an order of injunction against 4th respondent and its Union members from holding any violent demonstrations and meetings, shouting defamatory slogans, etc. within 200 meters from the petitioner's factory and from gheraoing the management staff, officers, apprentices and from preventing vehicle with finished, unfinished, semi-finished products, raw materials and fixtures and other things from entering into the factory or leaving the factory.

5(c). After hearing both sides, the interim injunction granted as stated above was made absolute by order dated 21.11.2007. After the said order, the writ petitioner has once again approached respondents 1 to 3 for giving protection to enforce the injunction order granted by the Civil Court. According to the petitioner, even after the order of injunction, respondents 4 to 12 have involved in illegal activities by erecting tent within 20 meters from the factory main gate; assembling in groups and shouting abusive and threatening slogans in front of the gate; threatening and intimidating the staff while entering and leaving the factory; indulging in stopping the vehicles and checking the personal belongings, bags etc. of the staff while leaving the factory; assaulting essential service suppliers and thereby paralysing the functioning of the factory; and causing damages to the vehicles by breaking the wind shield etc. which bring materials to the company. It was in the circumstance that in spite of the injunction being made absolute after hearing respondents 4 to 12, the said

respondents have indulged in the said activities, the petitioner filed the above writ petition.

6. Respondents 4 to 12 have filed counter affidavit. As per the counter affidavit, it is the case of the respondents that they have filed CMA.No.44 of 2007 against the order of injunction granted in I.A.No.100 of 2007 in O.S.No.54 of 2007 and they have also applied for the stay of order of injunction. Therefore, according to the respondents 4 to 12, the writ petitioner having approached the Civil court, cannot file the present writ petition. According to the respondents, the writ petitioner has committed unfair labour practice and dismissed 33 workers, including respondents 5,8,11 and 12, without enquiry. There is also breach of settlement by demanding the workers to perform higher work load which created industrial strife. According to respondents 4 to 12, an offender cannot be granted any discretionary relief under writ jurisdiction. The reason for strike called by respondents 4 to 12 is the illegal demand of the petitioner for upward revision of work load, in violation of the settlement between the parties entered in January,2006 which expires on 30th June,2008 and during the bilateral negotiations also the Management is demanding higher work load.

6(a). According to respondents 4 to 12, the Management has brought 45 outsiders labelling them as "Trainees" and kept them as day in and day out, only to intimidate the workers. The complaint to Inspector of Factories has not been attended by the Inspector properly and the issue is pending before the Division Bench by way appeal. Therefore, according to the respondents, the demands made by them are not illegal. The notice for strike was given on 10.10.2007 and from 15.11.2007, respondents 4 to 12 and its Union workers are on legal strike. The idea of the writ petitioner is to break the strike by undertaking outsiders and also to achieve production. The police protection itself is sought for only to break the strike, which is legal. Since respondents 4 to 12 have already filed appeal against the order of injunction granted by the Civil Court, the writ petitioner is not entitled for any interim order in this case.

7. Mr.R.Gandhi, learned senior counsel appearing for the writ petitioner has submitted that there are totally 163 workmen employed in the writ petitioner Company and while admitting that the 4th respondent is a major Union consisting more number of workers who are on strike from 15.11.2007, his contention is that respondents 4 to 12 have lost their case before the Civil Court in the interlocutory application stage, since the Civil Court has granted injunction pending suit after hearing both sides and it is the respondents 4 to 12 who have filed appeal against the said order and it is not necessary for the writ petitioner to approach the Civil Court again and it is the duty of respondents 1 to 3 in the writ petition to give protection to the petitioner in order to implement the civil Court order.

7(a). According to the learned senior counsel, even the finished products which are situated inside the factory of the petitioner are not allowed to be taken away and under the guise of right of strike, the employees should not indulge in illegal and violent activities. According to him, respondents 4 to 12 have no right to prevent the employees who are willing to work and other persons who are entering into the factory premises cannot be prevented in the name of strike. His further contention is that respondents 4 to 12 are not allowing any lorry even to go out, with the result, the writ petitioner is unable to supply materials to Defence Department.

7(b). He would also rely upon an order of this Court made in W.P.No.33949 of 2007 dated 29.10.2007, in which the claim of the 4th respondent Union for direction to take action against the writ petitioner, viz., not to engage trainees/apprentices, was dismissed. Further, he would also rely upon the judgement of this Court in K.C.P.Ltd., vs. Inspector of Police, Tiruvottiyur & Others (1993 (1) L.L.J. 365) and Midland Rubber & Produce Co.Ltd., Cochin vs. Superintendent of Police,

Pathanamthitta & Others (1999 (1) L.L.J. 385) to substantiate his contention that police protection can be granted by this Court while exercising jurisdiction under Article 226 of the Constitution of India in respect of maintaining industrial peace. He would also submit that many criminal complaints have been given by the writ petitioner.

8. The learned Government Advocate, on instructions would submit that between 15.11.2007 and 19.11.2007, 2 Police Constables were posted regularly in the premises of the writ petitioner; from 20.11.2007 to 07.12.2007 one Sub-Inspector of Police and 4 Constables were posted daily in the premises and from 08.12.2007 till date two Police Constables have been posted to give 24 hour protection to the writ petitioner Company. It is also submitted by the learned Government Advocate appearing for respondents 1 to 3 that, on complaint from the writ petitioner, five cases were registered in Crime Nos.217 of 2007 and 3, 4, 5 and 6 of 2008 and on complaints from employees, two cases were registered in Crime Nos.7 and 8 of 2008. The complaints by the employer/writ petitioner relate to damage to public properties while the complaints by the workmen relate to threatening and making division among the workers. According to learned Government Advocate, Crime No.9 of 2008 has been registered by police on 05.01.2008 under Sections 323 and 324 IPC.

9. Mr.V.Prakash, learned senior counsel appearing for respondents 4 to 12 submits that the Union members are on legal strike from 15.11.2007, which arose under Industries Disputes Act. According to him, the writ petitioner/employer failed to act as per the settlement on payment of wages and work load and wanted to extract higher work load and many workers have been dismissed without notice. According to him, as per Section 18 of the Trade Unions Act,1926, the Union has immunity against the order of injunction except where tort has been committed. According to him, as against the order of this Court dismissing the writ petition filed by the 4th respondent to direct the Chief Inspector of Factories, Chennai to take action against the writ petitioner, so as to ensure that the trainees/apprentices are not engaged for regular production work, an appeal has been filed. According to him, the conduct of the writ petitioner is clearly a case of unfair labour practice. His submission is that in the name of engaging outsiders and calling them as apprentices/trainees, the writ petitioner employed them as regular employees and the idea of the writ petitioner is to divide the Union and if that is allowed, the concept of collective bargain will be thrown to winds, which is not the intend of the legislature in making laws.

10. I have heard Mr.R.Gandhi, learned senior counsel for the petitioner, Mr.L.S.M.Hazan Fizal, learned Government Advocate for respondents 1 to 3 and Mr.V.Prakash, learned senior counsel for respondents 4 to 12 and perused the entire records.

11. On the face of it, it is clear that the members of the 4th respondent Union went on strike from 15.11.2007 and they are the majority Union. The question to be decided in this case is as to whether the 4th respondent Union, which has called for strike can be permitted to prevent the writ petitioner/employer from moving out its materials from the premises or to do any violent activities preventing the employees as well as other staff members and officers from entering into and coming out of the factory.

12. It is also not in dispute that the writ petitioner has approached the Civil Court and filed a suit against the 4th respondent and its Union members. Pending the suit, the petitioner also filed an interlocutory application for injunction and the civil Court has granted an order of injunction against the 4th respondent and its Union members from obstructing and preventing the ingress and egress of men and materials from and to the factory and from holding any violent demonstrations and meetings, shouting defamatory slogans, pitching tents, etc., within 100 meters of the premises of the factory and the said injunction order was made absolute by the civil Court on 21.11.2007.

13. Even though it is the case of the respondents 4 to 12 that they have filed an appeal against the said order, it remains the fact that there is an order of injunction against respondents 4 to 12.

14. The main grievance of the 4th respondent is that in the name of appointing trainees/apprentices, the writ petitioner/employer is employing them on full time basis with an intention of removing the striking employees from the factory and that cannot be allowed under industrial law. In this regard, it is relevant to note that in fact, aggrieved by the said conduct of the writ petitioner/management, the 4th respondent has already approached this Court by filing W.P.No.33949 of 2007, for direction against the Chief Inspector of Factories to take necessary action against the writ petitioner to ensure that trainees/apprentices are not engaged for regular production work. Further, respondents 4 to 12 have given complaint to the Deputy Commissioner of Labour, Salem and the matter was taken up for conciliation and on the basis of the conciliation, the writ petition came to be dismissed on 29.04.2007 holding that the 4th respondent can work out its remedy in terms of conciliation and also bring specific grievance before the Chief Inspector of Factories and seek appropriate direction. In such circumstances, it is certainly not open to the 4th respondent to contend that the writ petitioner is engaging trainees/apprentices on regular basis. As found by this Court in the case stated above, it is not as if the 4th respondent is not having any remedy. In such event of the writ petitioner employing trainees/apprentices as regular employees, the 4th respondent can always work out its remedy either under Factories Act or other legislation.

15. Even assuming that the strike resorted to by the members of the 4th respondent Union is valid in law, it does not mean that the 4th respondent and its members can indulge in any violent activities. If it is the grievance of the 4th respondent and its members that there is breach of any agreement, it is always open to them to raise a dispute under the Industrial Disputes Act and the right to strike is not to increase pressure on the employer by violent means. The concept of collective bargain even though enables the workmen to take concerted act for achieving their demands through legal means, the same can never be permitted to enable the workers to indulge in violent activities. A reference to various complaints and counter complaints given by both sides as submitted by the learned Government Advocate shows that all is not well with the 4th respondent and its Union members. The collective bargain is not to show strength by violence but the same has to be shown by legal means alone.

16. In this case, the writ petitioner has moved the civil Court and after hearing both the parties, the civil Court has come to the conclusion that prima facie the writ petitioner is entitled for an order of injunction preventing the 4th respondent and its members from involving in violent activities or gathering in large numbers, preventing the workers, who are willing to work either to enter into or to come out of the premises or preventing the writ petitioner from allowing the materials to be taken out and taken inside the premises and such injunction has been granted against the 4th respondent upto 100 meters and as the said order of injunction is in force, it is not open to the 4th respondent and its members to violate the said order in the guise of immunity under the Trade Unions Act,1926.

17. Even under the Trade Unions Act, 1926, the members of the Union are certainly not permitted to involve in violent activities. In such circumstances, giving police protection to factory by this Court in exercising its jurisdiction under Article 226 of the Constitution of India is not unknown. It was in K.C.P.Ltd., vs. Inspector of Police, Tiruvottiyur & Others (1993 (1) L.L.J. 365), in similar circumstance, when the employer has obtained an injunction order from the civil Court, the question arose as to whether this Court can issue Writ of Mandamus for police protection by exercising jurisdiction under Article 226 of the Constitution of India. This Court (K.S.Bakthavatsalam,J.) while considering large number of case laws on the issue, including a Division Bench judgement of this Court in Coimbatore Periyar District Motor Transport Munnetra Sangam (by President) vs.

Sivakumar Transports, Tiruppur and others (99 Law Weekly 409) and Mining and Allied Machinery Corporation Ltd., (by its Law Officer and Constituted, Attorney N.K. Mandal) vs. Superintendent of Police, St.Thomas Mount, Madras (1987 II LLN 294) and rejecting the claim of the learned counsel for the Union therein that no Mandamus can be issued for police protection, held as follows:

"11. ..... Considering the issue in this case, I am of the view that with regard to the order of Sri Lanka Sugar Corporation of Colombo, the non-despatch of the articles would affect the interest of the nation, especially the international market. So also, with regard to the despatch of the articles to the Challapalli Sugars Ltd., at Lakshmipuram unit, (I am of the view) the interest of the nation and industrial growth are more important than the interest of handful of workers. Taking the view that the request made in this case would come within the reasoning of the Division Bench of this Court, cited supra, I am of the opinion that the police protection should be ordered. ..... "

18. A specific reference was also made on the judgement of Mohan,J.(as he then was) in Mining and Allied Machinery Corporation Ltd., (by its Law Officer and Constituted, Attorney N.K. Mandal) vs. Superintendent of Police, St.Thomas Mount, Madras (1987 II LLN 294), wherein it was held that a negative approach of lawful agitation by the working class cannot be justified by resorting to law and order problem in the industrial sector, which is as follows:

"Strikes, lock-outs, satyagrahas and demonstrations are nothing new in our country. Promotion of social justice over the past few decades was, to a considerable extent, due to militant and agitational approach of the workmen and not, to any appreciable degree, due to condescension by the management. It is but true that in the process of securing to the workmen more amenities and privileges and better conditions of service, the Industrial Tribunals, Labour Courts, and the Courts of this Country have played a vital role. A negative approach to lawful agitation by the working class to secure higher wages and better living conditions cannot be justified by resort to the plea of maintaining law and order in the industrial sector."

19. The jurisdiction of this Court in granting a Writ of Mandamus by directing the police to give protection to the management to carry on lawful trade was again reiterated by the Division Bench of Kerala High Court in Midland Rubber & Produce Co.Ltd., Cochin vs. Superintendent of Police, Pathanamthitta & Others (1999 (1) L.L.J. 385), wherein AR.Lakshmanan,J. (as he then was) while presiding over the Bench, has held as follows:

"8. ..... Just as the workers are entitled to protection of their legal rights by Courts of law, the employers are also equally entitled to protection of their fundamental right to carry on their lawful trade or business. In our opinion it is not open to the respondents-Unions to take the law their own hands and obstruct the Permanent workers of the appellant from discharging their duties or prevent the appellant from doing the rain guarding work. Sufficient safeguards are provided under the Industrial Disputes Act to prevent exploitation of workers by employers. It is strange to find that one set of workers claimed right to get employment on the basis of some practice and preventing the employer from engaging labour of their choice. If the claim of the labour is allowed, then a day will come when a citizen of this Country has to seek his employment in his own village, taluk or district. Such a claim would run counter to the rights guaranteed under the Constitution of India. Therefore, the right now claimed by the respondents on the basis of some practice cannot be countenanced at all."

20. In view of the above settled position of law, I do not think that the facts of this case will be

covered under Section 18 of the Trade Unions Act,1926. Section 18(1) of the Trade Unions Act,1926 certainly prohibits the employer from breaking the contract of employment and it gives immunity to an office bearer in respect of the act done by him. When the employer attempts to divide the striking workers, which is lawful, it is certainly open to the 4th respondent Union and its members to approach the Inspector of Factories or raise an industrial dispute by treating the same as unfair labour practice, etc. and the immunity granted under Section 18(1) of the Act cannot mean to say that the Union must be permitted to achieve its object by resorting to the method which are not permitted in law.

21. In view of the above said facts and legal position, I am of the considered view that the writ petitioner must be granted police protection in the light of the order of injunction granted on 09.06.2007 in I.A.No.100 of 2007 in O.S.No.54 of 2007, which was made absolute on 21.11.2007, to perform its legal obligations, but at the same time, with liberty to the 4th respondent Union to approach the appropriate forum for redressal of its grievance regarding the alleged employment of trainees/apprentices on regular basis by the writ petitioner.

In view of the same, the writ petition stands ordered on the above terms. No costs.

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To

1.The Superintendent of Police
Krishnagiri, Krishnagiri District.

2.The Deputy Superintendent of Police
Hosur, Krishnagiri District.

3.The Inspector of Police
SIPCOT, Hosur,
Krishnagiri District.